IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 154 of 2006

Date of decision: 31st August, 2006

A.F.R. (Approved for Reporting)

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~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 154 of 2006

1. Smt. Laxmi Devi W/o Late Rajendra Singh.
2. Km. Alka (Minor) D/o Late Rajendra Singh.
3. Km. Sonam (Minor) D/o Late Rajendra Singh.
4. Km. Varsha (Minor) D/o Late Rajendra Singh.
5. Master Krishna (Minor) S/o Late Rajendra Singh.
6. Km. Shivani (Minor) D/o Late Rajendra Singh.
   (Appellant No. 2 to 6 being minor through their mother & natural guardian Smt. Laxmi Devi) W/o Late Rajendra Singh).
   All R/o Mohalla Tanda Ujjain, Tehsil Kashipur, District Udham Singh Nagar. …….. Appellants

Versus

1. Mohammad Tabbar S/o Sri Kallan,
   R/o Mohalla Khatari, Tehsil Ramnagar,
   District Nainital.
2. New India Assurance Company Ltd.,
   Divisional Office – Hotel Kumaon Plaza.
   Bazpur Road, Kashipur,
   District Udham Singh Nagar. …….. Respondents

Mr. B.S. Parihar, Advocate for the appellants.
Ms. Farida Siddiqui, Advocate for respondent No. 1.
Mr. P.C. Maulekhi, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / District Judge, Udham Singh Nagar at Rudrapur vide Award dated 21.12.2005 passed in M.A.C.P. No. 94 of 2004.

2. The claimants, who are unfortunate widow and minor children of deceased Rajendra Singh, claimed compensation of Rs 10,00,000/- for his death in the motor accident on 12.04.2004 when the deceased, who was coming on his bicycle, was dashed by the offending vehicle

Canter Truck bearing registration No. UA04/1486 resulting in his instantaneous death. The driver of the offending vehicle Canter Truck was caught by the police on the spot itself. On the report about the accident, a criminal case was registered against the driver at Crime No. 261 of 2004 at Police Station Kashipur. The claimants pleaded that deceased Rajendra Singh used to earn Rs. 140/- per day and Rs. 4,200/- per month.

3. The owner and insurer of the offending vehicle Canter Truck contested the claim. The owner denied his liability to pay compensation to the claimants on the plea that as the vehicle was insured, the liability to pay compensation was of the Insurance Company. The insurer of the offending vehicle Canter Truck, on the other hand, pleaded that the driver of the truck was not holding a valid driving license and as such, the Insurance Company was not liable to pay compensation to the claimants.

4. The claimants examined PW1 Smt. Laxmi Devi, PW2 Sanjeev Sharma and PW3 Vijay Kumar in support of their case, whereas the owner and insurer of the offending vehicle did not examine any witness.

5. The Tribunal, on the evidence ed by the claimants, held that deceased Rajendra Singh died on account of the injuries sustained by him in the accident on 12.04.2004; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Canter Truck; and the insurer of the offending vehicle Canter Truck was liable to pay compensation to the claimants.

6. As the evidence led by the claimants about the income of the deceased was not found reliable, the Tribunal assessed his income at Rs. 15,000/- per annum on the basis of the notional income prescribed in the Second Schedule under Section 163-A of the Motor Vehicles

Act. After deducting 1/3rd of the said amount as the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 10,000/- per annum. By multiplying the annual dependency of Rs. 10000/- with the multiplier of '16', the compensation was worked out to Rs. 1,60,000/-. The Tribunal awarded further sums of Rs. 2,000/- for Funeral Expenses; Rs. 5,000/- for Loss of Consortium to the widow; and Rs. 2,000/- for Loss of Estate. Thus, a total sum of Rs. 1,69,000/- was awarded as compensation to the claimants for the death of Rajendra Singh in the motor accident. The Tribunal, further, directed payment of interest on the amount of the compensation at the rate of 6% per annum from the date of the claim petition.

7. Mr. B.S. Parihar, the learned counsel for the appellants vehemently argued that the Tribunal has erred in discarding the evidence led by the claimants about the income of the deceased and in assessing his income at Rs. 15,000/- per annum only and in awarding low compensation of Rs. 1,69,000/- only.

8. Mr. P.C. Maulekhi, the learned counsel for respondent No.2 New India Assurance Company Ltd., relying upon the dictum of the Apex Court in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** submitted that the Tribunal has erred in selecting the higher multiplier of '16'.

9. The findings recorded by the Tribunal that deceased Rajendra Singh died on account of the injuries sustained by him in the accident; the accident occurred due to the rash and negligent driving of the driver of the offending vehicle Canter Truck; and the insurer of the offending vehicle Canter Truck was liable to pay compensation to the claimants have, now, attained finality, as the respondents have not filed any appeal against the Awards.

10. In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal / Court should be just and proper in the facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236,** observed in paras 8 to 10:

> "8. The assessment of damages to compensate the dependents is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.
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> 9. The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.
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> 10. Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often may imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."

11. True, the evidence led by the claimants about the income of the deceased at Rs. 4,200/- per month was not reliable and as such, we do not find any fault in the approach of the Tribunal in discarding the evidence in that behalf.

12. The assessment of the income of the deceased at Rs. 15,000/- per annum on the basis of the notional income prescribed in the Second Schedule under Section 163-A of the Motor Vehicles Act, however, requires reconsideration. The notional income of Rs. 15,000/- per annum in the Second Schedule under Section 163-A of the Motor Vehicles Act was prescribed in the year 1994. The accident in the present case took place in 2004. If the depreciation in the purchase value of the rupee during the last one decade is taken into consideration, the notional income of Rs. 15,000/- prescribed in the year 1994 should be taken at Rs. 36,000/- per annum in the year 2004. Even otherwise, an unskilled labourer, these days, can easily earn Rs. 100/- per day and Rs. 3,000/- per month. In our considered view, the Tribunal ought to have assessed the compensation taking the income of the deceased at Rs. 36,000/- per annum. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs. 36,000/- per annum.

13. By deducting 1/3rd of the income of the deceased of Rs. 36,000/- as his personal expenses, the claimants' dependency is assessed at Rs. 24,000/- per annum.

14. The multiplier of '16' selected by the Tribunal, considering that deceased Rajendra Singh was 35 years of age on the date of the accident is certainly on the higher side. The Apex Court in the case of **T.N. State Transport Corpn. Ltd. Vs. S. Rajapriya and others** reported in **(2005) 6 Supreme Court Cases 236** reduced the multiplier of '16' to '12' considering that the age of the deceased, in that case, was 38 years. In our considered view, multiplier of '12' would be appropriate in the present case too.

15. By multiplying the annual dependency of Rs. 24,000/- with the multiplier of '12', the compensation work out to Rs. 2,88,000/-. The other sums of Rs. 2,000/- awarded by the Tribunal towards Funeral

Expenses; Rs. 5,000/- for Loss of Consortium to the widow; and Rs. 2,000/- for Loss of Estate, do not call for any interference. Thus, the claimants become entitled to receive total compensation of Rs. 2,97,000/-.

16. For the foregoing reasons, the appeal filed by the claimants under Section 173 of the Motor Vehicles Act, is allowed in part. The compensation of Rs. 1,69,000/- awarded by the Tribunal is enhanced to Rs. 2,97,000/-. The enhanced amount of compensation shall carry interest at the rate of 6% per annum from the date of the claim petition i.e. 24.05.2004.

17. No order as to costs.

(J.C.S.Rawat, J.) **(Rajeev Gupta, C.J.)**
31.08.2006 31.08.2006

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